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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
CONFIDENTIAL INFORMATION IN
CISCO'S OPPOSITIONS TO ARISTA'S
MOTIONS *IN LIMINE***

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco’s Motion to File Under Seal Confidential information filed in connection with Cisco’s Oppositions to Arista’s Motions *in Limine*. I make this declaration in accordance with Civil Local Rule 79-5(d)(1)(A).

3. As oppositions to Motions *in Limine*, Cisco’s Oppositions are non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the documents identified in the Sealing Motion as containing Cisco’s confidential information, also set forth below, because the information sought to be sealed reflects confidential information that “give[s] [Cisco] an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b):

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco's Opposition to Arista's Motion <i>in Limine</i> No. 1	Highlighted Portions	Arista
Cisco's Opposition to Arista's Motion <i>in Limine</i> No. 3	Highlighted Portions	Arista
Cisco's Opposition to Arista's Motion <i>in Limine</i> No. 5	Highlighted Portions	Arista
Exhibit 1 to the Declaration of John M. Neukom in Support of Cisco's Oppositions to Arista's Motions <i>in Limine</i> ("Neukom Declaration")	Entire	Arista
Exhibit 5 to the Neukom Declaration	Entire	Arista Cisco
Exhibit 17 to the Neukom Declaration	Entire	Arista
Exhibit 18 to the Neukom Declaration	Entire	Cisco
Exhibit 19 to the Neukom Declaration	Entire	Cisco
Exhibit 20 to the Neukom Declaration	Entire	Cisco
Exhibit 21 to the Neukom Declaration	Entire	Cisco
Exhibit 22 to the Neukom Declaration	Entire	Cisco

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DECLARATION OF SARA E. JENKINS IN SUPPORT OF
CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Exhibit 23 to the Neukom Declaration	Entire	Cisco
Exhibit 24 to the Neukom Declaration	Entire	Cisco
Exhibit 28 to the Neukom Declaration	Entire	Arista
Exhibit 30 to the Neukom Declaration	Entire	Arista
Exhibit 31 to the Neukom Declaration	Entire	Arista

5. Exhibit 5 is an excerpt from the April 25, 2016 deposition transcript of Charles Giancarlo which was designated as “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential and sensitive business information regarding Cisco’s competitive strategies and prior litigation. Maintaining this information as confidential provides Cisco with an “opportunity to obtain an advantage over competitors” who may compete with Cisco and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information to Cisco’s competitors would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitors to learn of Cisco’s strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

6. Exhibit 18 is an excerpt from the December 18, 2015 deposition transcript of Abhay Roy which was designated as “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential and sensitive information about the development of Cisco’s products. As such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business performance, structure, and

1 finances that could be used to gain unfair business advantage against them,” are properly sealed);
 2 *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.
 3 20, 2014) (compelling reasons exist to seal documents containing “highly sensitive information
 4 regarding [a party’s] product architecture and development.”)

5 **7.** Exhibit 19 is an internal Cisco email that was designated as “Highly Confidential –
 6 Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential information
 7 about Cisco’s product development and technology. As such, there are compelling reasons to seal
 8 this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal.
 9 Apr. 4, 2016) (documents containing “information about [a party’s] business performance,
 10 structure, and finances that could be used to gain unfair business advantage against them,” are
 11 properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2
 12 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing “highly
 13 sensitive information regarding [a party’s] product architecture and development.”)

14 **8.** Exhibit 20 is an internal Cisco presentation that was designated as “Highly
 15 Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains
 16 confidential information about Cisco’s product and business development and technology. As
 17 such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-
 18 BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information
 19 about [a party’s] business performance, structure, and finances that could be used to gain unfair
 20 business advantage against them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-
 21 04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal
 22 documents containing “highly sensitive information regarding [a party’s] product architecture and
 23 development.”)

24 **9.** Exhibit 21 is an internal Cisco email that was designated as “Highly Confidential –
 25 Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential information
 26 about Cisco’s product and business development and technology. As such, there are compelling

1 reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,
 2 at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business
 3 performance, structure, and finances that could be used to gain unfair business advantage against
 4 them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL
 5 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing
 6 “highly sensitive information regarding [a party’s] product architecture and development.”)

7 **10.** Exhibit 22 is an internal Cisco email that was designated as “Highly Confidential –
 8 Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential information
 9 about Cisco’s product and business development and technology. As such, there are compelling
 10 reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,
 11 at *2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business
 12 performance, structure, and finances that could be used to gain unfair business advantage against
 13 them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL
 14 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing
 15 “highly sensitive information regarding [a party’s] product architecture and development.”)

16 **11.** Exhibit 23 is an email that was designated as “Highly Confidential – Attorneys’
 17 Eyes Only” under the Protective Order. This exhibit contains confidential information regarding a
 18 Cisco license. As such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*,
 19 No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents
 20 containing “information about [a party’s] business performance, structure, and finances that could
 21 be used to gain unfair business advantage against them,” are properly sealed); *Delphix Corp. v.*
 22 *Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014)
 23 (compelling reasons exist to seal documents containing “highly sensitive information regarding [a
 24 party’s] product architecture and development.”) Maintaining this information as confidential
 25 provides Cisco with an “opportunity to obtain an advantage over competitors” who may compete
 26 with Cisco and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298

1 F. App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm
2 Cisco's business by, *inter alia*, allowing Cisco's competitors to learn of Cisco's strategies. This
3 would "harm [Cisco's] competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589,
4 598 (1978).

5 **12.** Exhibit 24 is a copy of a letter that was designated as "Highly Confidential –
6 Attorneys' Eyes Only" under the Protective Order. This exhibit contains confidential information
7 regarding a Cisco license and Cisco's competitive strategies. As such, there are compelling
8 reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,
9 at *2 (N.D. Cal. Apr. 4, 2016) (documents containing "information about [a party's] business
10 performance, structure, and finances that could be used to gain unfair business advantage against
11 them," are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL
12 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing
13 "highly sensitive information regarding [a party's] product architecture and development.")
14 Maintaining this information as confidential provides Cisco with an "opportunity to obtain an
15 advantage over competitors" who may compete with Cisco and gather information regarding the
16 same less optimally than Cisco. *Elec. Arts*, 298 F. App'x at 569. Moreover, disclosing this
17 information to Cisco's competitors would harm Cisco's business by, *inter alia*, allowing Cisco's
18 competitors to learn of Cisco's strategies. This would "harm [Cisco's] competitive standing."
19 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

20 **13.** Cisco also files this motion to seal to provide Arista Networks, Inc. the opportunity
21 to file a declaration pursuant to Civil Local Rule 79-5(e) regarding the confidentiality of the other
22 documents identified in the chart above.

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DECLARATION OF SARA E. JENKINS IN SUPPORT OF
CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed in Redwood Shores,
3 California, on October 7, 2016.

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5 /s/ Sara E. Jenkins
6 Sara E. Jenkins
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DECLARATION OF SARA E. JENKINS IN SUPPORT OF
CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Sara E. Jenkins.

Dated: October 7, 2016

/s/ John M. Neukom
John M. Neukom